

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23288 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of
the judgment ?

4 Whether this case involves a substantial question of
law as to the interpretation of the constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANKARBHAI BABULAL KAHAR

Versus

COMMISSIONER OF POLICE VADODARA CITY AND OTHERS

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Appearance :

MR SATISH R PATEL for Petitioner.

RULE SERVED BY DS for Respondent Nos.1 - 2.

MR ND GOHIL, AGP for Respondent No. 3.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 14/06/2006

ORAL JUDGMENT

By filing this petition, the petitioner has challenged his detention order dated 09-11-2005, who is detained as a “bootlegger” under provisions of Prevention of Anti Social Activities Act (“PASA” for short). Along with the order of detention, the petitioner is also served with the

grounds of detention. In the grounds of detention, there is a reference of five criminal cases pending against the petitioner. All these cases registered under the provisions of the Bombay Prohibition Act. It is alleged that the petitioner is dealing in country liquor. The detaining authority after arriving at subjective satisfaction has passed the aforesaid order of detention against the petitioner. According to the detaining authority, the activities of the petitioner are prejudicial to public health and public order.

Learned advocate for the petitioner vehemently submitted that except aforesaid criminal cases, there is no other material available for coming to the conclusion that the petitioner is a “bootlegger”. He further submitted that no statement of any independent witness is recorded by the detaining authority for coming to the conclusion that the activities of the petitioner are prejudicial to public order or even tempo of life is disturbed by his activities. He further submitted that it cannot be said that the petitioner is a bootlegger, simply because criminal cases are registered against him under the Bombay Prohibition Act and it can at the most be said that the petitioner has violated provisions of law but it cannot be said that the petitioner has violated public order or that his activities are prejudicial to public health. It is submitted by him that the authority has not applied its mind properly and came to the conclusion that the activity of the petitioner is prejudicial to public health, even when there is no material on record in this behalf. In order to substantiate his say, learned advocate for the petitioner has relied upon the decision of the Supreme Court in District Collector, Ananthapur and another vs. V. Laxmanna reported in 2005 AIR SCW 1822. In the aforesaid case, the Supreme Court has observed as under in paragraph 7 :

“7. We do not think this argument of the learned counsel can be accepted. If the detention is on the ground that the detenu is indulging in manufacture or transport or sale of arrack then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act but if the arrack sold by the detenu is dangerous to public health then under the Act, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to him that the arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation.”

Mr.N.D.Gohil, learned AGP is not in a position to substantiate his say that the activities of the petitioner are prejudicial to public health.

It is required to be noted that in the detention order it is not mentioned as to how the activity of the petitioner is prejudicial to public health and it can safely be said that the petitioner may be guilty of violating law of the land but it cannot be said that the activity of the petitioner is prejudicial to public health.

Considering the aforesaid aspect of the matter and considering the fact that there is nothing to show that the activity of the petitioner is prejudicial to public health, at the most it can be said that the petitioner is guilty of violating law and order but it cannot be said that the activity of the petitioner is prejudicial to public health. Therefore, the impugned order of detention is required to be quashed and set aside.

In view of what is stated herein above, this petition is allowed. Order of detention dated 09-11-2005 is quashed and set aside. Petitioner

– Shri Shankarbhai Babulal Kahar is ordered to be released forthwith unless his presence is required in connection with any other case. Rule is made absolute with no order as to costs.

(P.B.MAJMUDAR, J.)

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